1387.

SUPREME COURT OF THE UNITED STATES.

No. 125.

MARY BEIN AND RICHARD BEIN, HER HUSBAND, G. S. HAWKINS, AND JAMES McMASTERS, PLAINTIFFS IN ERROR,

vs.

MARY HEATH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF LOUSIANA.

INDEX.

	Original.	Print.
Answer	9	7
Amended answer	10	7
Answer on rule to amend judgment	18	12
Bond annexed to petition	4	4
Bill of exceptions, No. one	11	8
Do. No. two	12	9
Citation and marshal's return	5	5
Do. do.	7	5
Do. do.	8	6
Continuance	10	7
Judgment, final	13	9
Judgment overruling motion for new trial	15	10
Judgment on motion to amend final judgment	19	12
Motion for new trial	14	10
Motion to amend judgment	16	11
Marshal's return on the above	17	11
Motion and order for writ of error	19	12
Petition	1	2
Submission of cause	10	8
Submission of rule for new trial	15	10
Submission of rule to amend judgment	18	12
Writ of error	21	13
Citation	22	14
Service of citation	23	14

Gideon, printer.

United States circuit court, fifth circuit and district of Louisiana.

MARY HEATH
vs.
MARY and RICHARD BEIN et al. } No. 1751.

Pleas and proceedings before the honorable circuit court, fifth circuit and district of Louisiana, at a circuit court of the United States, in and for the fifth circuit and district aforesaid, being the April term, A. D. one thousand eight hundred and forty-nine, of said court, held at the city of New Orleans, on the ninth and tenth days of May, A. D. 1849.

Be it remembered, that heretofore, to wit, on the first day of December, A. D. one thousand eight hundred and forty-eight, came Mary Bein and others, by their attorneys, Messrs. Elmore & King, in the clerk's office of said court, and filed a petition, which is in the words and figures following, to wit:

To the honorable the circuit court of the United States, for the fifth circuit and district of Louisiana.

The petition of Mary Heath, widow of ——— Heath, deceased, respectfully represents, that she is an alien, a citizen of the Kingdom of Great Britain, and subject of her majesty, Queen Victoria; and that Mary Bein, wife of Richard Bein, and said Richard Bein, and Gilbert S. Hawkins and James McMasters, are citizens of the State of Louisiana, residing therein, and within the jurisdiction of this honorable court.

Petitioner further represents, that on or about the 6th of May, 1843, she obtained in this honorable court an order of seizure and sale of certain property of said Mary Bein, mortgaged to the petitioner for the sum of eleven thousand two hundred and forty-seven $\frac{3}{100}$ dollars, $11,237 30, with interest at the rate of ten per cent. on the sum of ten thousand seven hundred and eleven $\frac{71}{100}$ dollars, $10,711 71, from the 1st day of May, 1843, and for eight dollars costs of protest.

All of which facts will more fully appear from reference to the said record of said suit, now on file in this honorable court, entitled, Mary Heath vs. Mary Bein and Richard Bein, and of this docket No. 1121.

That afterwards, to wit, on or about the 28th of June, 1843, the said Mary Bein, authorized and assisted by her said husband, obtained, an injunction from this honorable court, staying the sale of the property which had been seized by the marshal of this honorable court, under the order of seizure and sale, upon giving as surety for the said injunction the said Gilbert S. Hawkins and said James McMasters.

All of which facts will more fully appear from reference to the said suit, entitled Richard Bein and Mary Bein, his wife, vs. Mary Heath, and of the docket of this honorable court No. 1133.

That to obtain the said injunction, the said Mary Bein, (duly authorized by her said husband,) as principal, and the said Gilbert S. Haw-

and the said James McMasters as sureties, executed, under their hands and seals, the annexed bond, obligating themselves in the penal sum of three thousand dollars to the said Mary Heath, to pay all such damages as she may recover against them, in case it should be decided the injunction *should* was wrongfully obtained. All of which facts will more fully appear from the said bond, hereunto annexed and made a part of this petition.

Petitioner alleges, that by decision of this honorable court the said injunction was dissolved; and upon an appeal to the Supreme Court of the United States, prosecuted by the said Mary Bein and Richard Bein, the decision of this honorable court was affirmed, at the December term of the year 1847, as will more fully appear from a reference to the mandate of the said Supreme Court of the United States to this honorable court, and now on file in the records of this court in said suit of Richard Bein and Mary Bein vs. Mary Heath. The said mandate having been duly received and ordered to be executed by this honorable court.

Petitioner alleges, that the property mortgaged to the said Mary Heath, for the sale of which the said order of seizure and sale was issued, after the injunction was dissolved, was sold by the marshal of this honorable court for the sum of seven thousand dollars, leaving a large amount still due to the petitioner.

Petitioner alleges that she was greatly damaged by the wrongful issuance of said injunction; that she encountered long delays in obtaining any portion of the sum due to her; that she incurred many and heavy expenses in consequence of the said injunction, and was subjected to great vexation and trouble.

That she is entitled by law to damages, at the rate of ten per cent. per annum upon the amount enjoined; that she has paid various large sums to lawyers for their professional services in defending said injunction, and in getting the same dissolved, viz., to Messrs. Ellmore & King, attorneys at law, seven hundred dollars; to John R. Grymes, attorney at law, five hundred dollars; to J. W. Smith, five hundred dollars; and to attorneys and counsellors in Washington to attend the argument of the case in the supreme court—to Walter Jones, attorney at law, two hundred and fifty dollars, and to —— Bradley, esq., att'y at law, two hundred and fifty dollars.

That the trouble and labor of the petitioner was an injury to her of at least one thousand dollars.

That the damages thus caused to the defendant, as above alleged, amount to about eight thousand six hundred dollars, which the said Mary Bein and the said Gilbert S. Hawkins are bound in solido to pay to the petitioner, by virtue of the foregoing allegations, and the bond signed by them to the extent of three thousand dollars. As the damages greatly exceed the amount of the bond, the petitioner is entitled to judgment against the defendant for the whole penal sum of the said bond, *to* viz., for three thousand dollars, with interest from the date of judicial demand.

Petitioner alleges that, notwithstanding their indebtedness as afore-

said, the said defendants neglect and refuse to pay the above sum, wherefore she prays that the said defendants be duly cited to appear and answer this petition, and that, after all due proceedings had, the said defendants, to wit, Mary Bein, and Gilbert S. Hawkins, and James McMasters, be condemned, in solido, to pay petitioner the aforesaid sum of three thousand dollars, with interest and costs, &c.; and for all other relief in the premises, &c., &c., &c.

ELMORE & KING,
Attorneys for petitioner.

Bond.

Know all men by these presents, that we, Mary Bein, wife of Richard Bein, principal, and Gilbert S. Hawkins and James McMasters, surety, both of the city of New Orleans, are held and firmly bound, jointly and severally, unto Mary Heath, of the kingdom of Great Britain, in the sum of three thousand dollars, lawful money of the United States of America, to be paid to the said Mary Heath, her heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us, by himself and herself, and each of our heirs, executors, and administrators, firmly by these *by these* presents. Sealed with our seals, and dated the twenty-first day of June, in the year of our Lord eighteen hundred and forty-three.

Whereas Mary Heath, on the sixth day of May, in the year of our Lord one thousand eight hundred and forty-three, presented a petition to the honorable the circuit court of the United States, for the fifth circuit, holding sessions in and for the eastern district of Louisiana, praying for a writ of seizure and sale against the said Mary Bein and Richard Bein, her husband, and the said writ of seizure and sale was granted, and came into the hands of Algernon Sidney Robertson, U. S. marshal of this district, for execution; and to enjoin which said writ of seizure and sale the said Mary Bein has applied for an injunction.

Now, the condition of the above obligation is, that we, the above bounden Mary Bein, and Gilbert S. Hawkins [and] James McMasters, sureties, will well and truly pay to the said Mary Heath, the defendant in said injunction, and plaintiff in said case of seizure and sale, all such damages as she may recover against us, in case it should be decided that the said injunction was wrongfully obtained.

M. BEIN, [L. S.]
G. S. HAWKINS, [L. S.]
JAMES McMASTERS. [L. S.]

Signed, sealed, and delivered, in the presence of—
JOHN D. BEIN,
HY. D. RICHARDSON.

I authorize my wife to execute this bond.

R. BEIN.

Witness to signature of J. McMasters—
H. B. PAGE, *Dep. clerk.*

Citation.

MARY HEATH
vs.
MARY BEIN and Richard Bein, her husband, G. S. Hawkins, and Jas. McMasters. } No. 1751.

The President of the United States of America, to the marshal of the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to summon Gilbert S. Hawkins, citizen of the State of Louisiana, to comply with the demand of Mary Heath, citizen of the kingdom of Great Britain, contained in the petition, of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit, and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of January, 1849.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said district of Louisiana, this second day of [L. S.] December, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the said United States of America the seventy-third year.

ED. RANDOLPH, *Clerk.*

Marshal's return.

Received this second day of December, 1848; and, on the 2d day of December, 1848, served copies of the within citation, plaintiff's petition, and documents annexed, on the within named G. S. Hawkins, in the manner following, to wit, by handing the same to him in person at the city of New Orleans.

CHAS. A. LABUZAN,
Returned Dec. 2d, 1848. *Deputy marshal.*

Citation.

MARY HEATH
vs.
MARY BEIN and Richard Bein, G. S. Hawkins, and Jas. McMasters. } No. 1751.

The President of the United States of America, to the marshal of the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to summon Mary Bein and Richard Bein, her husband, citizens of the State of Louisiana, to comply with the demand of Mary Heath, citizen of the kingdom of Great Britain, contained in the petition of which a copy accompanies this citation, or to deliver their answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit, and district of Lou-

isiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against them by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday in January, 1849.

Witness the honorable Roger B. Taney, chief justice, of the Supreme Court of the United States of America, at the city of New Orleans, in the said district of Louisiana, this second day of [L. S.] December, in the year of our Lord one thousand eight hundred and forty eight, and of the independence of the United States of America the seventy-third.

ED. RANDOLPH, *Clerk.*

Marshal's return.

Received, this 2d day of December, 1848, and on the 5th day of December, 1848, served copies of the within citation, plaintiff's petition and documents annexed, on the within named Mary and Richard Bein, in the manner following, to wit, by handing the same to Mrs. Mary Bein, at domicil in the city of New Orleans.

Returned December 5th, 1848.

JOS. PRADOS, Jr., *D'y U. S. Marshal.*

Citation.

MARY HEATH
vs.
MARY BEIN and Richard Bein, her husband, G. S. Hawkins, and Jas. McMaster. } No. 1751.

The President of the United States of America to the marshal of the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to summon Jas. McMaster, citizen of the State of Louisiana, to comply with the demand of Mary Heath, citizen of the kingdom of Great Britain, contained in the petition, of which a copy accompanies this citation, or to deliver his answer to the same, in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due return hereof on the first Monday of January, 1849.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said district of Louisiana, this second day of [SEAL.] December, in the year of our Lord one thousand eight hundred and forty-eight, and of the independence of the said United States of America the seventy-third year.

ED. RANDOLPH, *Clerk,*
By WM. AUDRY, *D'y Clerk.*

Marshal's return.

Received, this 2d day of *Se* December, 1848, and on the 27th day of December, 1848 served copies of the within citation, plaintiff's petition and documents annexed, on the within named Jas. McMaster, in the manner following, to wit, by handing the same to him in person at his domicil, parish St. Bernard, La., eleven miles from the city of New Orleans. Rec'd December 27th, 1848.

JOS. PRADOS, Jr.,
D'y U. S. Marshal.

Answer.

MARY HEATH
vs.
MARY BEIN, G. S. Hawkins, et al.

U. S. circuit court.

The joint and several answer of the respondents in the above entitled suit, to the petition filed against them, deny all and singular the allegations therein contained; and for farther answer, they deny that they are responsible for any damage to the said plaintiff, or that she has incurred any, or has sustained any, by the issuing said injunction, according to equity or the law. Wherefore they pray that said petition may be rejected at the cost of plaintiff. And they pray for all general and special relief.

EGGLESTON,
Att'y for defendant.

Amended answer.

MARY HEATH
vs.
MARY BEIN et al.

U. S. circuit court.

The amended answer of said defendants to said petition respectfully denies all and singular the allegations of said plaintiff, and prays that said suit may be tried by a jury.

Wherefore defendants pray to be herein dismissed with costs, and for general and special relief, &c.

EGGLESTON, *Att'y.*

And afterwards, to wit, on the 9th day of May, A. D. 1849, the following order was entered upon the minutes of this court, which reads in these words and figures, to wit:

MARY HEATH
vs.
MARY BEIN, Richard Bein, et al. No. 1751.

The trial of this case being assigned for this day, Elmore and King, esqrs., appearing for the plaintiff, and Eggleston, esq., for defendant,

when, by consent of both parties, the trial by a jury is waived. Whereupon the case was taken up before the court, and the evidence being adduced and closed, it being three o'clock, p. m. Whereupon the court ordered that this case be continued till to-morrow, at 10 o'clock, a. m.

Afterwards, to wit, on the 10th day of May, 1849, this case was again argued before the court, and the following order entered upon the minutes, to wit:

MARY HEATH
vs.
MARY BEIN and Rich'd Bein et al. } No. 1751.

The trial of this case, as continued from yesterday, was this day resumed at 10 o'clock; whereupon, after evidence being adduced, and argument of counsel being closed, the case was submitted to the court, who took the same under advisement.

Bill of exceptions.

MARY HEATH
vs.
BEIN et al.

Circuit court of the United States, fifth circuit.

Be it known, that on the trial of the above suit the counsel for the plaintiff, to maintain the allegations of his petition, offered to prove by witnesses the amount of fees paid by the plaintiff to Elmore and King, J. R. Grymes, and J. W. Smith, esqrs., her attorneys in the court below, in the suit in chancery of Bein and wife against said Heath, and in the proceedings had in the seizure and sale obtained by said Heath against said Bein, which said seizure and sale was enjoined in said suit in chancery, to the introduction of which the defendants, by their counsel, objected, on the ground that the employment of said counsel by said plaintiff occurred before the issuing of the injunction and executing and filing of the injunction bond in the suit, and before the said defendants had incurred any obligation to pay any damages, interest, or costs in said suit.

And at the same time and place the said plaintiff, to maintain the allegations in her said petition, offered to prove by an attorney at law the supposed value of the legal services rendered by the counsel for the plaintiff in the said chancery suit in the Supreme Court of the United States; to the introduction of which said evidence the defendants, by their counsel, objected, on the ground that no evidence could be offered of a quantum meruit, under the issue formed between the parties aforesaid, the plaintiff in her petition having pleaded the payment to said counsel of a specific sum of money as their fees. But the court being of the opinion that all of said evidence was admissible, received the same. Whereupon the counsel for the defendant excepted to both ruling of the court as contrary to law, and prays that the bill of exceptions may be signed and sealed, and made a part of the record, which is accordingly done.

THEO. H. McCALEB, [SEAL.] *U. S. Judge.*

Bill of exceptions.

MARY HEATH
vs.
BEIN and others.

Circuit court of the United States, for the fifth circuit and district of Louisiana.

Be it known, that on the trial of this suit the plaintiff, by her counsel ——— ———, to maintain the allegations of her petitioner, offered to prove that a large portion of the rent of the mortgaged premises, for the sale of which she had issued against Mary Bein her executory process, has not been paid over to her by the tenant to whom the premises had been leased before the issuing of the injunction to stay said process; to the introduction of which evidence the defendants, by their counsel, objected as irrelevant to the issue joined, and because the court had appointed the marshal of the United States the receiver to collect said rent, and to hold the same subject to the final judgment of the court; and that the loss of said rent constituted no part of the damage sustained by the plaintiff by the issuing of the injunction, for which the defendants are legally liable on the injunction bond sued on; but the court being of the opinion that said evidence was admissible, received the same. To the admission of which said evidence the defendants, by their counsel, except, and pray that this their bill of exceptions may be signed, sealed, and made a part of the record, which is done.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Judgment.

MARY HEATH
vs.
MARY AND RICHARD BEIN et al.
No. 1751.

The parties herein having waived the jury and submitted this case to the court, after argument on the evidence, and the court being satisfied from the evidence, that the plaintiff has suffered damages from the injunction obtained by Mary Bein and her husband to a greater extent than the amount of the penalty in the bond sued on, and that the plaintiff is entitled to recover in this suit to the extent of the penalty of the bond against the defendants in solido:

It is hereby ordered, adjudged, and decreed, that the plaintiff have judgment against Mary Bein and Gilbert S. Hawkins, and James McMasters, in solido, for the sum of three thousand dollars, with interest from the second day of December, A. D. 1848, until paid, and costs of suit.

Judgment rendered 14th May, 1849.
Signed 15th June, 1849.

THEO. H. McCALEB, [SEAL.]
United States Judge.

Minutes.

And afterwards, to wit, on the 15th day of May, A. D. 1849, the following order was entered upon the minutes of said court, which reads in these words and figures, to wit:

MARY HEATH
vs.
MARY BEIN et al. } No. 1751.

On motion of H. B. Eggleston, of counsel for defendants, it is ordered by the court, that the said plaintiff do show cause, at 10 o'clock, a. m., on Saturday, 19th instant, why a new trial should not be granted in the above cause, on the ground following, to wit:

1st. The judgment of the court is contrary to law and evidence.

2d. The damages awarded by the court are extravagant and excessive.

3d. Counsels' fees could not be legally allowed as part of the damages.

4th. The damages, if any, that accrued before the execution of the bond could not be allowed; nor could the rent not collected be allowed as part of the damages.

5th. The tenor and effect of the bond covered only such damages as might result from a depreciation of the property in controversy; and it is not pretended that such depreciation took place.

6th. It is against all principle and law, and the evident meaning and purport of an injunction bond in equity, to allow damages.

7th. If plaintiff took an insufficient security for her debt, that is her own fault, and the defendants cannot be compelled to make up the deficiency.

And afterwards, to wit, on the 19th day of May, A. D. 1849, the following order was entered upon the minutes, which reads in these words and figures, to wit:

HEATH
vs. } No. 1751.
BEIN.

The rule herein taken by defendant on the plaintiff to show cause why a new trial should not be granted, being returnable this day, was called up for trial; when, after argument of counsel, the same was submitted and taken under consideration.

And afterwards, to wit, on the 4th day of June, A. D. 1849, this order was entered upon the minutes, which reads in these words and figures, to wit:

MARY HEATH
vs.
M. AND R. BEIN et al. } No. 1751.

The motion herein made for a new trial having been maturely considered by the court, it is ordered, adjudged, and decreed, that the same be, and it is hereby, overruled; the court reserving to itself the right of amending the judgment heretofore rendered.

And afterwards, to wit, on the 6th day of June, A. D. 1849, the following order was entered up, which reads in these words and figures, to wit:

MARY HEATH
vs.
M. AND R. BEIN et al. } No. 1751.

On motion of H. B. Eggleston, of counsel for the above defendants, and on suggesting to the court that the judgment drawn up by the counsel for the above plaintiff in this cause, and entered on the records of the court, is not the same one pronounced in said case by the court, but is totally different therefrom. It is therefore ordered by the court, that the said plaintiff do show cause, at 10 o'clock, a. m., on Friday next, the 18th instant, why said judgment should not be amended so as to make it conform to the decision of the court, and be rendered only for the ten per cent. interest, on the following grounds:

1st. The court in deciding said cause declared from the bench, at the time its decision was pronounced, that it did not take into consideration the amount of damages which the plaintiff may have sustained by the wrongful suing out of the injunction by the defendants against the plaintiff, but only the amount of interest assessed by the act of the State of Louisiana, passed in the year 1831, and that the interest awarded by said act on the dissolution of an injunction would exceed the penalty of the bond sued on.

2d. That the counsel for the plaintiff erred in drawing up a judgment, and delivering it up to the clerk to be entered up, condemning the defendants to pay three thousand dollars damages to the plaintiff, when the decision of the court, as delivered from the bench, awarded to the plaintiff only the ten per cent. interest on the amount of the judgment enjoined by the defendants, and no damages whatsoever.

3d. That the court only condemned the defendants to pay the plaintiffs ten per cent. interest without damages, and that it should have been so expressed in the judgment.

Marshal's return on the foregoing rules.

Received 6th June, 1849, and on the same day served copy of the within rule on W. A. Elmore, esq., one of the law partners of Elmore & King, by handing the same to him in person at New Orleans, and returned same day.

W. W. BUTLER,
Deputy United States Marshal.

And afterwards, to wit, on the 8th day of June, A. D. 1849, this order was entered upon the minutes, which reads in these words and figures, to wit:

MARY HEATH
vs.
M. and R. BEAN. } No. 1751.

The rule herein taken being returnable this day, was argued by H. B. Eggleston, esq., for defendants, and submitted to the court.

Answer to rule.

M. HEATH
vs.
BEIN et al. } No. 1751. U. S. C. C.

In answer to the rule taken in the above case, on the 6th of June instant, the plaintiff alleges:

1st. There was no legal notice of the trial of the rule served on the plaintiff.

2d. That the court could take no action upon the judgment after the motion for new trial had been overruled. Such are the express provisions of the code of practice.—Articles 547 and 548.

3d. The judgment was rendered by the court, and ordered to be entered by the court, after reading the form of the judgment.

The judgment was correct. The plaintiff had shewn damages to over $7,000. The judgment on the bond sued on was necessarily one for damages, and is in exact conformity to law.

The ten per cent. per annum allowed by law on the dissolution of injunction is allowed as damages. The rule should therefore be dismissed.

ELMORE & KING, *Att'ys for plaintiff.*

And afterwards, to wit, on the 14th day of June, A. D. 1849, the following order was entered upon the minutes of this court, which reads in these words and figures, to wit:

MARY HEATH
vs.
M. and R. BEIN. } No. 1751.

The rule herein taken on the 6th instant, having been maturely considered by the court, it is ordered that the same be dismissed at the defendants' costs.

And afterwards, to wit, on the 19th day of June, A. D. 1849, this final order was entered upon said minutes, which reads in the words and figures following, to wit:

MARY HEATH
vs.
M. and R. BEIN et al. } No. 1751.

On motion of Eggleston, esq., of counsel for defendants, and on his representing to the court that the said defendants felt aggrieved at the judgment herein rendered on the 15th instant, and that they desire to have a writ of error, that the proceedings may be reviewed in a higher court, it is ordered, that a writ of error be, and the same is hereby, allowed to the said defendants, returnable to the next term of the Supreme Court of the United States, on their furnishing bond with S. W. Oakey, as surety, in the penal sum of four thousand six hundred dollars, conditioned as the law requires.

I, Edmund Randolph, clerk of the circuit court of the United States, in and for the fifth circuit and eastern district of Louisiana, do hereby

...tify, that the foregoing 19 pages contain a full, true, and complete transcript of the records and proceedings in the case of Mary Heath vs. Mary and Richard Bein and others, so far as the same remains on file and of record in the said court.

In testimony whereof I have hereunto signed my name, and affixed the seal of said court, at the city of New Orleans, this 23d
[L. S.] day of August, A. D. 1849, and the seventy-fourth year of the independence of the United States.

EDMUND RANDOLPH, *Clerk*,
Per J. W. GURLEY, *Deputy Clerk*.

United States of America, circuit court of the United States, for the fifth circuit and eastern district of Louisiana.

I, Theodore H. McCaleb, United States judge for the eastern district of Louisiana, do hereby certify, that Edmund Randolph, whose name is signed to the above certificate, as clerk of the circuit court of the United States for the eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

I further certify, that J. W. Gurley, who signed said Edmund Randolph's name as clerk, was, at the time of signing the same, the duly appointed and qualified deputy clerk of said Edmund Randolph.

Given under my hand and seal, at New Orleans, in the eastern dis-
[L. S.] trict of Louisiana, this 23d day of August, 1849.

THEO. H. McCALEB, *U. S. J.*

Writ of error lodged in the clerk's office of the circuit court of the United States, for the 5th circuit and eastern district of Louisiana, in pursuance [of] the statute in such cases made and provided, this 19th day of June, 1849.

EGGLESTON, *Attorney of plaintiffs in error*.

Filed 19th June, 1849.

ED. RANDOLPH, *Clerk*,
Per J. W. GURLEY, *Deputy clerk*.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the 5th circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Mary Heath and M. and R. Bein et al., a manifest error hath happened, to the great damage of the said M. and R. Bein et al., as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together

with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 19th of June, in the year of our Lord one thousand eight hundred and forty-nine.

[L. S.]

ED. RANDOLPH, Clerk,
Clerk of the United States circuit court and eastern district of Louisiana.
Per J. W. GURLEY, *Deputy clerk.*

Citation in error.

The United States of America, to Mrs. Mary Heath, greeting:

Your are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, for the 5th circuit and eastern district of Louisiana, wherein Mary Bein and Richard Bein, her husband, G. S. Hawkins, and James McMasters, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand eight hundred and forty-nine.

[L. S.]

THEO. H. McCALEB, *U. S. Judge.*

Marshal's return.

Received June 19th, 1849, and on the 22d June, 1849, in the city of New Orleans, served copy of the within citation in error on Mary Heath, the defendant in error, in the following manner, to wit: by handing a copy of the citation in error, in person, to William A. Elmore, esq., attorney at law, and one of the law partners of the firm of Elmore & King, attorneys of record of Mary Heath, the defendant in error; and at the same time showing the said Elmore the original of said citation; the said Mary Heath being a subject of the Queen of England, and to the best of my knowledge residing in England.

Returned June 23d, 1849.

CHAS. A. LABUZAN, *Dy. marshal.*

Charles A. Labuzan, deputy United States marshal, in and for the fifth circuit and eastern district of Louisiana, being duly sworn, says, that on the 22d day of June, 1849, in the city of New Orleans, he

served a copy of the citation in error on Wm. A. Elmore, esq., attorney at law, and one of the law partners of the firm of Elmore & King, attorneys for Mary Heath, the defendant in errror, by delivering said copy to said Elmore in person, and at the same time shewing him the original of said citation; the said Mary Heath being a subject of the Queen of England, and to the best of my knowledge resides in England.

CHAS. A. LABUZAN, *Dy. U. S. Marshal.*

Sworn to and subscribed before me, at New Orleans, La., 9th July, 1849.

J. W. GURLEY, *D. C.*